

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**MICHAEL FRESH,**

**Plaintiff,**

**-versus-**

**DIAMOND DEVELOPMENT &  
INVESTMENTS, INC., d/b/a/  
DIAMOND DAVE'S STEAK-  
HOUSE, and DAVID ULMER,**

**Defendants**

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**CIVIL ACTION**

**FILE NO.: 1:13-cv-02657-WSD**

**MOTION TO STAY PRELIMINARY PRETRIAL  
DEADLINES AND DISCOVERY**

COME NOW Defendants named above, by and through the undersigned attorney, and appearing specially and without waiving the defenses of insufficient process, insufficient service of process, lack of personal jurisdiction and any other defenses available under state and/or federal law, and pursuant to Fed. R. Civ. P. 6(b) and 26, hereby respectfully move this Court for an Order staying the commencement of discovery and the parties' preliminary pretrial deadlines in the above-styled action, as set forth in the Federal Rules of Civil Procedure and the Local Rules of this Court, until such time as the Court has ruled upon the Defendants' Motion to Dismiss, filed herewith. In support of this Motion, the Defendants respectfully show the Court as follows:

## **I - PROCEDURAL HISTORY**

This action was filed on August 9, 2013. A related and companion case which involves a common factual nexus, common parties and common attorneys, Barbara Smith v. Diamond Development & Investments, Inc., 1:13-cv-02017-TCB was filed on June 17, 2013. Both cases were allegedly served at the same time and place and Motions To dismiss are being filed in each action. Motions for joinder for pre-trial and discovery purposes are also being filed in each action.

## **II . ARGUMENT AND CITATION OF AUTHORITY**

In the interests of judicial economy and to avoid undue burden on the parties and the Court, the Defendants hereby respectfully request that this Court issue an order temporarily staying the commencement of discovery and the parties' preliminary pretrial deadlines in this action, pending the Court's ruling on the Defendants' Motion to Dismiss. The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for its litigants. Landis v. North American Co., 299 U.S. 248, 254 (1936); see also United States v. Kordel, 397 U.S. 1, 12 n. 27 (1970) (acknowledging that district courts have discretionary authority to stay a case when the interests of justice so require); Patterson v. U.S. Postal Serv., 901 F.2d 927, 929 (11th Cir 1990) (holding that district court did not abuse its discretion in staying discovery because the court had "sufficient information before it upon which to rule"); Kashi v. Gratsos, 790 F.2d 1050, 1057

(2d Cir. 1986) ("[A] court may decide in its discretion to stay civil proceedings . . . when the interests of justice seem . . . to require such action") (internal quotations omitted); *S.E.C. v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375 (D.C. Cir. 1980), cert. denied, 449 U.S. 993 (1980) (same).

Because the Court's ruling on the pending Motion to Dismiss will determine whether Plaintiff's claims should be dismissed, and whether and/or to what extent the parties need to move forward with discovery (if at all), compliance with the preliminary pretrial obligations set forth in the Federal Rules and Local Rules prior to the Court's ruling on the Motion to Dismiss would be premature. The time and resources that the parties will expend in conducting an early planning conference, drafting initial disclosures and a joint preliminary planning report and discovery plan and participating in discovery will be rendered unnecessary if the Court grants either pending Motion to Dismiss and finds that Plaintiffs' claims should be dismissed. Therefore, the Defendants respectfully request that this Court exercise its discretion and temporarily stay the deadlines for the following preliminary pretrial obligations, pending the Court's ruling on the pending Motion to Dismiss:

- 1) Rule 26(f) Early Planning Conference. L.R. 16.1.
- 2) Joint Preliminary Report and Discovery Plan. L.R. 16.2.
- 3) Initial Disclosures. L.R. 26.1.
- 4) Commencement of the discovery period. L.R. 26.2.

### III. CONCLUSION

WHEREFORE, for the foregoing reasons, and in the interests of judicial economy , efficiency, and fairness to the parties, the Defendants respectfully request that this Court exercise its discretion and grant the instant Motion to Stay Preliminary Pretrial Deadlines and Discovery pending a ruling on the pending Motion to Dismiss. A proposed Order granting the instant Motion is attached hereto as Exhibit "A" for the Court's convenience.

Respectfully submitted this 18<sup>th</sup> day of November, 2013

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State Bar of Georgia 395056  
Attorney For Defendants

## CERTIFICATE OF SERVICE

I have this day served a true and complete copy of the above and foregoing upon all parties via the Court's electronic filing system.

Respectfully submitted this 18<sup>th</sup> day of November, 2013

JOHNSON & ASSOCIATES, P.C.

s/MICHAEL R. JOHNSON, SR.

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# EXHIBIT - A

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**ORDER GRANTING MOTION TO STAY PRELIMINARY  
PRETRIAL DEADLINES AND DISCOVERY**

This Court having read and considered the Defendants' Motion to Stay Preliminary Pretrial Deadlines and Discovery ("Motion to Stay") in the above-styled action, and for good cause shown therein,

IT IS HEREBY ORDERED that the Defendants' Motion to Stay is GRANTED, and the pretrial deadlines set forth in the Federal Rules of Civil Procedure and Local Rules of this Court, including without limitation the commencement of the discovery period as set forth in L.R. 26.2, be stayed until the Court has ruled upon the Defendants' Motion To Dismiss .

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Judge, United States District Court  
Northern District of Georgia